

DEPARTMENT OF HUMAN RESOURCES

4.4.3 POLICY ON PANDEMIC FLU AND OTHER INFECTIOUS DISEASES ATTENDANCE AND LEAVE

(a) Purpose and Scope

- (1) **Purpose.** To ensure that the Judiciary has comprehensive, equitable, and scalable human resources (HR) policies that facilitate the containment of pandemic flu or other infectious diseases while supporting Judicial Branch operations and protecting the health and welfare of employees.
- (2) **Scope.** This policy applies to all state-paid Judicial Branch employees except employees of the Register of Wills Offices and the Orphans' Courts.

(b) Definitions

- (1) **Accrued Leave** – Sick, annual, personal, or compensatory leave that an employee has earned at the time of the employee's absence.
- (2) **Administrative Head:**
 - (A) For the Appellate Courts, the Clerk of the Court for all employees under the Clerk's supervision;
 - (B) For the Circuit Courts, the Clerk of the Court for all employees under the Clerk's supervision and the County Administrative Judge for all state employees under his or her supervision;
 - (C) For the District Court, the Chief Judge of the District Court, the Chief Clerk, or the Administrative Clerk for all employees under his or her supervision;
 - (D) For the Administrative Office of the Courts (AOC), the State Court Administrator;
 - (E) For any units, the head of the unit where the employee works; or,
 - (F) Any person who serves as the authorized designee, by express written designation, of any of the foregoing persons.
- (3) **Essential Employee** -- An employee whose absence would jeopardize the continuation of essential functions or those positions deemed essential by the Judiciary. An essential employee serves in an essential position that has been officially designated as such, or the position or employee has been designated as such on an ad hoc basis depending on the nature and extent of the emergency or disaster.
- (4) **Flu-like Illness** -- A condition under which a person displays some or all of the following symptoms typically associated with the flu: fever; chills; cough; sore throat; runny nose; body aches; headache; tiredness; diarrhea; or vomiting. Fever is usually described as temperature of 100.4° F (38° C) or greater. Symptoms of flu-like illness occurring during a period of a pandemic flu outbreak will be presumed to be pandemic flu.
- (5) **Health Care Provider** -- A medical doctor authorized to practice medicine or surgery by the state in which the doctor practices, or other person listed in the Judiciary Policy on Leave, Section (b)(9), if authorized to practice in a state and performing within the scope of that authority.
- (6) **Judiciary Human Resources Department (JHRD)** – The department within the AOC that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; recruitment; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.

- (7) **Unit** - The Attorney Grievance Commission, the Client Protection Fund, the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure.

(c) Policy Statement

A pandemic flu or an outbreak of other infectious diseases may require special policies and procedures to address the unique challenges presented by such an event. This policy addresses the attendance and leave issues that typically are at issue during a pandemic or other outbreak of an infectious disease. This policy will provide guidance to administrative heads, managers, supervisors, and employees on how to navigate those challenges. In addition to this policy, there may be administrative orders or other directives of the Chief Judge of the Court of Appeals, the Chief Judge of the Court of Special Appeals, the Chief Judge of the District Court, Administrative Judges, or the State Court Administrator that could apply.

(d) Procedures

There are many variables associated with a potential outbreak of pandemic flu and other infectious diseases and the possible effects on Judiciary employees and the State. These include how widespread the pandemic flu and other infectious diseases are, the severity of its symptoms and effects, how many people are affected by it, and local variations in the severity. This policy therefore identifies three levels of response to a pandemic flu or other infectious disease outbreak, each of which can be applied to any location of the Judiciary or State (*i.e.*, a county, city, or an individual building) or to the Judiciary as a whole, depending on the level and extent of the effects in a specific location.

The Chief Judge of the Court of Appeals, in consultation with the appropriate Administrative Judge and others as necessary, shall determine the appropriate level of response for a given area.

(e) Levels of Operation During a Pandemic or Outbreak of an Infectious Disease

(1) Level 1 – Normal Operations

- (A) This level is marked by a low to moderate level of concern regarding the associated risks with the pandemic flu or disease outbreak, such as the number of pandemic flu and other infectious disease cases the severity of which is equivalent to the normal seasonal flu. During this stage, the number of pandemic flu or other infectious disease cases may increase over time. Although all Judiciary facilities will be open and conducting business as usual, as the outbreak progresses, absenteeism may become noticeable and begin to cause operational concerns.
- (B) The objectives at this level are to: facilitate Judiciary operations; ensure that employees are appropriately using sick leave; and to ensure that teleworker agreements and deliverables are strictly monitored by supervisors.

Administrative Heads should identify essential employees, and provide educational and informational material on employee health, including proper hygiene practices to be used in the workplace. Employees should take care of their health by eating right, getting plenty of rest, and getting flu and other appropriate vaccinations.

(C) Employee Attendance

- (i) Employees are expected to report to work as usual unless ill, on approved leave, or as otherwise directed by the Administrative Head or the JHRD

- (ii) The Administrative Head may declare any employee to be an essential employee during a pandemic or disease outbreak to ensure that the Judiciary continues to function effectively and efficiently. In addition, the Administrative Head may require any employee to report to work unless the employee is on approved sick/medical leave.
- (iii) To ensure operations, the Administrative Head may revoke previously approved use of annual, personal, and other accrued leave.
- (iv) Failure to report to work or to perform assigned duties as required may result in disciplinary action, up to and including termination from employment.
- (v) An Administrative Head may alter an employee's work schedule, work location, or to allow telework to meet the needs of the Judiciary pursuant to the Telework policy to provide service to the citizens of Maryland, or to promote social distancing to prevent or slow the spread of the pandemic flu and other infectious diseases.
- (vi) An employee who reports to work exhibiting symptoms of a flu-like illness or those of other infectious diseases may be sent home using the employee's accrued leave or leave-without pay if no leave is available.

(D) Employee Absence

- (i) At this level, an employee who is absent due to the employee's own illness, or to care for a sick member of the employee's immediate family, may use accrued sick, annual, personal or compensatory leave.
- (ii) An employee who stays home because the employee's child's school is closed may use accrued annual, personal or compensatory leave with the approval of the administrative head or leave-without-pay if no such leave is available with the approval of the JHRD, if the employee provides documentation from the child's school that the school was closed.
- (iii) An employee who must be absent for one of the foregoing reasons and who does not have accrued leave or has run out of accrued leave during the period of absence, will be placed on leave without pay for the part of the absence not covered by paid leave.
- (iv) Employees may be required to provide medical certification upon their return to work pursuant to this policy, the Policy on Emergency Preparedness, and the Policy on Leave.

(2) Level 2 – Flexible Operations

- (A) This level is marked by a moderate level of concern regarding the associated risks of the flu or disease outbreak, such as a moderate to high level of pandemic flu or other infectious disease cases but with low mortality rates. The number of cases is expected to increase. Judiciary facilities may be open for business as usual, but certain facilities may be closed, and out-of-state travel for employment purposes may be restricted. Some schools may be closed, forcing parents to stay home. Employees must report to their Administrative Head if they have traveled out of the country within 14 days prior to or during a declared emergency or disaster involving a pandemic flu or other infectious disease, prior to returning to work from such travel. The Administrative Head shall notify the JHRD of this information to determine if other steps need to be taken.
- (B) The objectives at this level are to: minimize the risks associated with the emergency or disaster, and to minimize the spread of the pandemic flu or other infectious disease; encourage

- employees to stay home if ill to avoid the spread of the flu; and to encourage social distancing by relaxing telework requirements where practical to mitigate face-to-face contact where possible.
- (C) The Judiciary will communicate relevant and accurate information to employees regarding any changes in policy or practice.
- (D) **Employee Attendance**
- (i) Employees are expected to report to work as usual unless ill, on approved leave, or as otherwise directed by the Administrative Head or the JHRD.
 - (ii) The Administrative Head may require an essential employee to report to work during a pandemic or disease outbreak to ensure that the Judiciary continues to function during the crisis. In addition, the Administrative Head, if he or she deems necessary, may require any other employee to report to work during an emergency or disaster event, unless the employee is on an approved sick leave absence.
 - (iii) To ensure operations, the Administrative Head may revoke previously approved use of annual, personal and other accrued leave.
 - (iv) An employee who fails to report to work as expected or directed or to perform assigned duties, unless the employee or eligible family member is ill, may result in disciplinary action, up to and including the termination from employment.
 - (v) An Administrative Head may alter an employee's job duties, work schedule, or work location, or to allow telework to meet the needs of the Judiciary and to promote social distancing to prevent or slow the spread of the flu or other infectious disease
 - (vi) An employee who reports to work exhibiting symptoms of a flu-like illness or those of other infectious diseases may be sent home using the employee's accrued leave or leave-without pay if no leave is available.
- (E) **Employee Absence**
- (i) An employee who is absent due to the employee's own illness or that of an eligible family member may use accrued sick, annual, personal, or compensatory leave. If no such leave is available, then the employee may use leave-without-pay with the approval of the JHRD.
 - (ii) An employee who stays home because the employee's child's school is closed may use accrued annual, personal or compensatory leave with the Administrative Head's approval, or leave-without-pay if no such leave is available with the approval of the JHRD, if the employee provides documentation from the child's school that the school was closed.
 - (iii) Employees may return to work after an absence of five (5) to seven (7) days from the onset of a flu-like illness, and after remaining symptom-free and fever-free (without the use of fever reducing medications) for twenty-four (24) hours, without providing medical documentation. However, upon notice to the employee by the Administrative Head upon requesting leave, an employee may be required to provide documentation of an illness on a case-by-case basis.

(3) Level 3 – Emergency Operations

- (A) This level is marked by a high concern for the risks associated with the pandemic flu or other infectious disease outbreak, such as the number of cases and/or a greater severity of the resulting illness, with the likelihood of increasing mortality rates. Schools will be closed, either throughout the State or in affected areas. Judiciary facilities may be closed to the public, either

statewide or in designated areas, such as by county or facility, and out-of-state travel for employment purposes may be restricted. Employees must report to their Administrative Head if they have traveled out of the country within 14 days prior to or during a declared emergency or disaster involving a pandemic flu or other infectious disease, prior to returning to work from such travel. The Administrative Head shall notify the JHRD of this information to determine if other steps need to be taken.

- (B) The objectives at this level are to: contain the risks associated with the emergency or disaster or the pandemic flu or other infectious diseases by ceasing all non-emergency essential/mission-critical functions; require sick employees to remain at home in order to avoid the spread of the pandemic flu or other infectious diseases by instituting on site screenings for employees entering facilities; and, facilitate social distancing by relaxing telework requirements.
- (C) During this stage, only mission-critical functions will continue on-site. Employees who are not required to report to work but who can telework will be required to do so. Employees who are not required to report to work or telework will be placed on administrative leave.
- (D) Employees may be screened at the workplace entrance, and those who meet the criteria for symptoms of flu-like illness will be sent home. In such situations, the employee will be required to use the employee's own accrued leave. If no such leave is available, then leave-without-pay may be an option with the approval of the JHRD.
- (E) **Employee Attendance**
 - (i) All essential employees unless on sick leave or other form of approved leave are required to report for work. Other employees also may be required to report as determined by the Administrative Head or the JHRD.
 - (ii) To ensure operations, the Administrative Head may revoke previously approved use of annual, personal and other accrued leave.
 - (iii) Failure of an employee to report to work, unless on sick or other form of approved leave, or to perform assigned duties as required, may result in disciplinary action, up to and including termination from employment.
 - (iv) The Administrative Head may alter an employee's work schedule, work location, or duties to meet the needs of the Judiciary or to promote social distancing to prevent or slow the spread of the pandemic flu or other infectious diseases. An employee may be required to perform work assignments even though the assigned duties are not within the scope of the employee's classification and may be assigned to work at any location in the State for periods of time other than those normally designated as the employee's regular work hours
 - (v) Employees with jobs suitable for telework may be allowed or required to telework at the discretion of the Administrative Head, even if there is not a prior telework agreement in place.
 - (vi) The Judiciary may screen employees for illness prior to their entry into the workplace. Employees who meet the criteria for symptoms of a flu-like illness will be sent home. In such situations, the employee will be required to utilize the employee's own accrued leave. If no such leave is available, then leave-without-pay may be an option with the approval of the JHRD.

(F) Employee Absence

- (i) Employees may be placed on administrative leave if the employee's work location is closed, there is no alternative Judiciary location available, and the employee is incapable of working from home.
- (ii) Employees who are absent due to their own illness or that of an eligible family member may use accrued sick, annual, or personal leave, or compensatory time. If no such leave is available, then leave-without-pay may be an option with the approval of the JHRD.
- (iii) An employee who was absent from work due to his or her own illness may return to work after an absence of five (5) to seven (7) days from the onset of the illness, and after remaining symptom-free and fever-free (without the use of fever-reducing medications) for twenty-four (24) hours, without providing medical documentation. However, upon notice to the employee by the Administrative Head upon requesting leave, an employee may be required to provide documentation of an illness on a case-by-case basis.

(4) Leave Provisions Specific to the COVID-19 Virus

- (A) Effective April 1, 2020, notwithstanding the leave provisions described in operational Levels 1 through 3 above, if an employee is on paid administrative leave as a result of the impact of the COVID-19 virus to Judiciary operations, the employee may remain on paid administrative leave if the employee is unable to work for the following reasons:
 - (i) The employee is ill or is needed to care for an eligible family member who is ill during the declared emergency.
 - (ii) The employee is needed to care for the employee's child as a result of the child's day care provider or school being closed because of the COVID-19 emergency.
 - (iii) The employee has been advised by a health care provider or Administrative Head to self-quarantine due to concerns related to COVID-19 or the employee is subject to a government quarantine or isolation order related to COVID-19.
 - (iv) The employee is caring for an individual who is quarantined pursuant to paragraph (iii).
 - (v) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- (B) An employee may use a maximum of 80 hours of paid administrative leave for the reasons described in paragraph (A), or until the COVID-19 emergency ends as declared by the Chief Judge of the Court of Appeals, whichever is longer. An employee will be required to use other leave for such absences once the employee's eligibility for administrative leave ends.

The leave provisions provided in this Section 4 end on December 31, 2020, and do not carry over into future leave years.

(5) Emergency Family and Medical Leave Expansion Act (FMLA) /Families First Coronavirus Response Act

- (A) An employee's absence is a qualifying reason for protected leave under the *Policy on Family and Medical Leave Act* if the employee is unable to work or telework due to a need for leave to care for the employee's child under the age of 18 if the child's school or day care provider is closed due to the COVID-19 health emergency.
- (B) To be eligible for the expanded FMLA coverage in (A), the employee must have been employed with the Judiciary (or State) for 30 days; the employee is not required to meet the qualifying requirements described in the *Policy on Family and Medical Leave Act*, Section (g).

- (C) An eligible employee under (A) and (B) is entitled to use their balance of FMLA leave (up to 12 weeks) as calculated in the *Policy on Family and Medical Leave Act*.
- (D) Leave taken under this Section 5 is compensated as Administrative Leave described in Section 4 with its applicable limits, or other accrued leave. Where leave is foreseeable, an employee should provide notice of the need for such leave to their Administrative Head as soon as is practicable.
- (E) The employee may be required to provide reasonable documentation of the need for leave in both Section (4) and Section (5), consistent with any regulations issued by the Department of Labor.
- (F) This temporary FMLA expansion will end on December 31, 2020.

(f) Travel Restrictions and Reporting Requirements

- (1)** As stated in Section (e), for workplace safety reasons, travel for employment purposes may be restricted during a declared emergency or disaster. The Administrative Head may prohibit work-related travel to areas affected by such an event, or from returning to work from such areas until the employee has secured a medical clearance to return to work.
- (2) Reporting Requirements**
 - (A) Employees must report to their Administrative Head if they have traveled out of the country within 14 days prior to or during a declared emergency or disaster involving a pandemic flu or other infectious disease, prior to returning to work from such travel. The Administrative Head shall notify the JHRD of this information in order to determine if other steps need to be taken.
 - (B) Consistent with the Centers for Disease Control’s recommendations, an Administrative Head may send an asymptomatic employee home or require the employee to work from home upon returning from travel to an area with “widespread sustained” transmission.
 - (C) Employees must report to their Administrative Head if they have had close contact with a symptomatic individual, or with a laboratory-confirmed case of a pandemic flu virus or other infectious disease. Close contact is defined by the Centers for Disease Control as “sat on an aircraft within 6 feet (two airline seats) of, or live in the same household as, are an intimate partner of, or are caring for at home,” the symptomatic individual with a laboratory confirmed case of a pandemic flu virus or other infectious disease.
 - (D) Employees must report to their Administrative Head having direct contact with infectious secretions of a pandemic flu virus or other infectious disease case (e.g., being coughed on).
 - (E) Employees must report to their Administrative Head any voluntary or ordered isolation or quarantine, any laboratory testing or confirmation of a pandemic flu virus or other infectious disease diagnosis, and any symptoms of acute respiratory illness (e.g., fever, cough, difficulty breathing).
 - (F) Unless an employee would create an unsafe or unhealthful work environment or is a direct threat to him or herself or others, an employee with a laboratory confirmed case of pandemic flu or other infectious disease may return to work: (1) upon certification by a healthcare provider that the employee is able to work and presents no risk; or (2) consistent with the guidelines and recommendations issued by the Maryland Department of Health and the Centers for Disease Control.
 - (G) The above information will assist in determining whether to allow an employee to return to work or to require the employee to take leave.

(3) Self-Quarantine

- (A) An employee who travels outside the contiguous United States will be **required** to self-quarantine for 14 days prior to returning to work. The employee will be allowed to return to work after the quarantine period if the employee exhibits no COVID-19 symptoms.
- (B) The employee is required to use his or her accrued leave during the quarantine period unless the employee is in a position suitable for telework and the employee is capable of teleworking pursuant to the Policy on Telework.
- (C) In lieu of a quarantine, the employee may provide medical documentation that he or she does not suffer from the pandemic flu or other infectious disease and does not pose a threat to the workplace.

(g) Policy Not Subject to a Grievance Action

Management's decisions or action related to this policy do not provide grounds for a grievance.

(h) Interpretive Authority

The JHRD is responsible for the interpretation of this policy.

(i) Exceptions

The Chief Judge of the Court of Appeals or the State Court Administrator may make exceptions to any provision of this policy.

- (j) Not a Contract:** This policy is not intended to, and does not, create contractual employer obligations with respect to any matter it covers. Nothing contained in this policy is intended to be a guarantee that employment or any other benefit will continue for any period of time. Furthermore, no representative of the Judiciary has the authority to provide such assurances, oral or written, to at-will employees.